IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.1814/1998
(Smt. Sugan Kanwar Vs. State of Raj. & Ors.)

Date of order : 25.10.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. B.S. Deora, for the petitioner.
Mr. S.N. Tiwari, Dy. Govt. Advocate.

By way of filing the present writ petition, the petitioner has prayed for grant of family pension and gratuity in accordance with the law.

According to the facts of the case mentioned in the writ petition, the petitioner's husband late Shri Kanwar Singh was appointed in the Irrigation Department on 1.5.1965 and he worked upto 17.7.1976 till his death.

It is contended by the learned counsel for the petitioner that late Shri Kanwar Singh was although initially appointed as daily rated employee but later on he was given permanent status in accordance with the

provisions of Rule 3 (2) of the Work Charge Rules, 1964 after his death vide order dated 9.8.1995. It is contended by the learned counsel for the petitioner that after declaring him permanent by the Department under the Rules of 1964, obviously he became regular employee of the government though the order of permanent status was not issued to the petitioner's husband during his service tenure but later on said order was passed by the department as per the decision of the Government. Learned counsel for the petitioner has invited my attention towards a judgment rendered by this Court reported in WLR 1991 (S) Raj 340 (Sujan Singh V State of Raj. & Ors.) in which it has been held that those employees who have completed 10 years service and have been granted permanent status, they shall be treated to be permanent and regular and should be equated with the permanent employee for all purposes. It is further held that those employees who have been declared permanent after completion of ten years of service is entitled to all type of allowances and benefits which are available under the Rajasthan Service Rules.

Therefore, after declaring the petitioner's husband as permanent in the year 1995, the petitioner became entitled for family pension in accordance with the Rajasthan Service Rules. It is also contended that due to inaction on the part of the respondents, husband of the petitioner was not declared permanent in time

but later on after 18 years of his death, he was declared permanent by the decision of the Government after completion of ten years of service. Due to inaction of the Department, the petitioner's family suffered irreparable loss. It is also contended that after death CPF was paid to the petitioner and petitioner moved an application before the department in the year 1996 for granting family pension but the claim of the petitioner has been refused by the respondents and matter of pension was not finalized though the department has recommended her case to the Pension Department vide Annexure-4. While inviting the attention of this Court towards Annexure-4 communication dated 25.10.1996 sent by Assistant Engineer to the Joint Director, Pension Department, Jodhpur in which it is specificially stated that "स्व श्री कुंवर सिंह वाहन चालक कार्यप्रभारी केडर में स्थाई है अत: स्थाई कर्मचारी को पेंशन लाभ देय है । एवम पेंशन का ओपुशन उप निदेशक राज्य बीमा एवम प्रा. विधि विभाग राजस्थान, जयपुर से स्वीकृत शुदा प्रकरण के साथ सलंग्न है ।" Meaning thereby, there was option given by husband of the petitioner for pension.

According to the learned counsel for the petitioner though he was entitled to get pensionary benefit and her pension case was to be finalized and she was to be paid family pension in accordance with the Rajasthan Service Rules but it was not granted on illegal grounds. Therefore, the present writ petition

has been filed by the petitioner. Learned counsel for the petitioner vehemently argued that the petitioner being wife of late Shri Kunwar Singh is very much entitled to get family pension so also other retiral benefits but only amount of CPF was paid to the petitioner. Petitioner is illiterate lady and she can only sign, therefore, the legal right of the family pension has been denied by the respondents on illegal premise. The petitioner is ready to deposit the amount of C.P.F. which was paid to her.

Per contra, learned Dy. Govt. Advocate vehemently opposed the writ petition and raised preliminary objection that this writ petition has been filed in the year 1998 claiming pension for the services rendered by petitioner's husband till 1976, therefore, this writ petition may be dismissed on the ground of delay and latches. Further, it is argued by learned Dy. Govt. Advocate that the petitioner was paid CPF of Rs.6285/- on 18.7.1976 and the petitioner's husband did not opted for pension, therefore, the petitioner is not entitled to get any benefit of pension/family pension so also she had claimed pension after lapse of 20 years therefore, this writ petition may be dismissed.

I have considered the rival submission made by both the parties.

It is true that this writ petition has been filed after delay of 20 years but it is also obvious from the record that the husband of the petitioner died in the year 1976 after rendering more than 10 years of service in the respondent department. Under the Work Charge Rules, the department was under obligation to grant him permanent status after completion of ten years of service but the said benefit was not extended to him in time by the Department. It is very strange that on one hand, the State Government is raising ground of delay for dismissal of the writ petition and on the other hand, the petitioner's husband was granted permanent status after 18 tears of his death on 9.8.1995 so also the department has prepared the case of the petitioner for family pension and the said case was sent to the Pension Department for allowing family pension to the petitioner and now before this Court the department is agitating that this writ petition may be dismissed on the ground of delay only. In my opinion, such argument is not sustainable because claim of family pension is continuous cause of action.

Therefore, the preliminary objection with regard to delay and latches is rejected.

It is obvious from the record that petitioner's husband worked for more than 10 years of service and he was declared permanent employee in the year 1995 after his death, therefore, it was obligatory

duty of the department to allow family pension in accordance with Rajasthan Service Rules but instead of allowing the said benefit, the department is contesting the right of pension. Vide Annexure-4, the pension case was prepared and was forwarded to the Pension Department, meaning thereby, the department is of the opinion that petitioner is entitled for family pension for the services rendered by her husband. Similarly, in view of the judgment rendered by this Court reported in WLR 1991 (S) Raj. 340, the husband of the petitioner was to be treated permanent and was entitled to get all benefits, which are available under Rajasthan Service Rules but said benefits were not extended to the petitioner.

In case of Baso Devi Vs. State of Rajasthan & Ors., reported in 2003 (2) CDR 1073 (Raj.), it has been held by this Court while considering similar controversy as follows :

> "7. Undeniably the husband of the petitioner at the time of his death was holding the post of Helper Grade I in the Work Charged Cadre. The State Government by memorandum dt. 31.1.1977 conveyed the decision of the Government of Rajasthan that the Work-charged employees who were absorbed/appointed on regular post on conversion of workcharged post into regular post under the Govt. from time to time be allowed to exercise the option to elect either to continue the contribution towards

Provident Fund or to opt for pensionary benefits. By order dt. 23.7.1977 the Govt. passed another order adding para 9 to the memorandum dt. 31.1.1977 as under :-

Government of Rajasthan Finance (Gr.) Department

Memo

No.F. 1 (26) FD(Gr.2)/74 dated Jaipur, the 10.3.1977.

Sub : Counting the Work-charged service for pension on absorption/appointment of work-charged Employees on regular post under the Government.

The Governor are pleased to order that after existing para 8 the following para may be added in the Finance Department Order of even number dt. 31.1.1977, namely;

The work-charged employees who were absorbed on regular posts but died before exercising option for pension under these orders shall be deemed to have opted for pension unless the members of family of such deceased specifically make a request that they may be paid contributory Provident Fund benefit due to deceased. The Head of Office should before preparation of pension papers invariably ascertain from the members of the family of the deceased entitled to receive the retirement benefits whether he/she would like to receive Contributory Provident Fund benefit or not."

8. The aforequoted notification deals with the work-charged employees who were absorbed on regular posts but died prior to the date of notification i.e. 31.1.1977,

which directs that such employees shall be deemed to have exercised their option for pension under these orders unless the members of family make a request for payment of C.P.F. It is not the case of the department that the petitioner requested them to pay the C.P.F. In my opinion the petitioner is entitled to exercise the right to get the family pension and arrears accrued. The contention of the respondent about the delay and laches in filing the writ petition cannot be accepted. The Division Bench of this Court in Rukma vs. State of Rajasthan, 2000 (3) WLC (Raj.) 102 indicated that the cause of action for pension being recurring, no question of delay or laches.

9. In D.S. Nakara vs. Union of India, AIR 1983 SC 130, the Constitution Bench of the Hon'ble Supreme Court held that criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after specified date while depriving the benefits to those retiring prior to that date was violative of Art. 14.

10. After having closely scrutinised the material on record I do not find any justifiable criterion to draw the line between those who retired earlier and those retired after 1.9.1982. Both such set of employees were equally placed in the PHED of the State of Rajasthan. All the employees who got retired prior to 1.9.1982 had served the PHED for a very long period and they had earned their legitimate expectation. It is not something that they seek as a begging

> bowl. In my considered opinion the employees for the purpose of receiving pension form a class and there is no criterion of which classification of employees retiring prior to 1.9.1982 and retiring subsequent to that date can provide a rational principle correlated to the object under lying payment of pension. The eligibility criteria devised the Rules 22-A of 1964. Rules being thoroughly arbitrary violates Art. 14 and is struck down with the specification that 1964 Rules shall be applicable to all retired workcharged employees of PHED irrespective of their date of retirement. In other words the employees who got retired prior to 1.9.1982 shall also be entitled to pensionary benefits.
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> 11. Consequently, the writ petition stands allowed and the respondents are directed to pay the entire arrears of family pension to the petitioner within three months from the date of receipt of the judgment and continue to pay the same in future. The amount already paid by the respondents as Contributory Provident Fund shall be adjusted towards her account and the balance if any shall be paid to the petitioner within two months from the date of receipt of the intimation from the department. The parties shall bear their own costs."

Therefore, while following the above decision it is held that the denial of family pension to the petitioner is illegal and has no foundation of law, as such, in the interest of justice while holding the petitioner entitled for family pension for services

rendered by her husband in the Irrigation Department, the respondents are directed to allow family pension to the petitioner and retiral benefits as available under the Rajasthan Civil Services Rules within a period of three months. The respondents are further directed to pay 9 % simple interest on the amount of family pension from the date of entitlement. The C.P.F. amount already paid may be adjusted from the arrears. The respondent shall further pay cost of the writ petition which is quantified as Rs.5000/- to the petitioner.

Accordingly, the writ petition is allowed.

(GOPAL KRISHAN VYAS), J.

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